Fall 2016 • Volume 3

MBA Messenger

MBA Wins Thomas G. Cannon Equal Justice Medal

MBA President Andy Wronski and President-Elect Shannon Allen

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Group Term Life Insurance Plan

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The State Bar of Wisconsin Group Term Life Insurance Plan with coverage issued by *The Prudential Insurance Company of America*—was designed for a simple purpose: to provide money to help keep your family's hopes and dreams for the future on track following an untimely death. It's money to help pay the mortgage, so they can continue to live in the family home; or to help with college expenses, so your children can get the education they deserve. It's money to help ensure your family's financial future is protected.

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*This policy provides ACCIDENT insurance only. It does NOT provide basic hospital, basic medical, or major medical insurance as defined by the New York State Department of Financial Services. IMPORTANT NOTICE—THIS POLICY DOES NOT PROVIDE COVERAGE FOR SICKNESS. The State Bar of Wisconsin Group Term Insurance coverages are issued by The Prudential Insurance Company of America, a Prudential Financial company, Newark, NJ. Contract Series 83500. The Plan Administrator is Pearl Insurance, 120 East Glen Avenue Peoria Heights, IL 61614-5348, 800-447-4982. SRW 416516

Regular Features

Make Your Voice Heard

Send your articles, editorials, or anecdotes to mflores@milwbar.org. We also have seats available on the *Messenger* Committee. We look forward to hearing from you!

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In This Issue:

Letter *to* the Editor

Charlie Barr, Editor

Election Day is close enough that I can safely come clean, okay? Plus, just to be extra safe, I chose this particular publication for that purpose because, well, let's face it, almost nobody reads it.

Did you really believe I've been trying to win this thing? Did you really think I could win by deliberately alienating not only the vast majority of ethnic groups in this country, but also an entire *gender*—which just happens to constitute the majority of voters? Did you really envision me being elected when white supremacy groups were coming out of the landfills to endorse me? How about when I was cozying up to Vladi Putin? I mean, c'mon, folks.

Hey, I'm not *stupid.* You don't amass a multi-billion-dollar fortune, not to mention a hot-lookin' wife, if you're *stupid,* okay? I'm smart! Other people are stupid! I've been saying this election is rigged. Well, I don't lie. I'm the one rigging it!

For a moment I was a little nervous when I picked a fight with that Gold Star family. (Never had a nervous moment before, okay? Always wondered what it felt like.) I thought maybe I had gone too far and people would see what I had up my sleeve. I needn't have worried: no one was the wiser. Hey, if there's a sucker born every minute, eventually they fill up a whole country, okay?

Why am I doing this, you ask? I'll tell you why. Hey, I'm not crazy about what's-her-name, either, but I took a gander at the GOP primary field and one thought occurred to me: "no." It was the Mickey Mouse Neocon Clubhouse, for chrissakes. I mean, Ben Carson? Scott Walker? C'mon, folks. Someone needed to clear the whole bunch outta there, and I was just the guy to do it. I'm tough, I'm smart, and I *never* lose, okay? Except when that's the plan.

Why would I even *want* to be President of the United States? It's a fixed-income job. I haven't been on a fixed income since that summer in the 60s when I was busboy in the Catskills with a scorching case of poison oak. Not my cuppa joe, okay? Plus, I already have an airplane.

When you look back on it, you'll be embarrassed you didn't get it. I mean, I'm exhausted from all the alienating I've done, and that's saying something, okay? I've even alienated droves of conservatives and one honkin' lot of Republicans—neither of whom, I must remind you, have historically counted me among their number. You really shoulda figured this one out, folks.

So, the joke's on you and I'm the Master of All I Survey, okay? My plan, being mine, is brilliant and completely foolproof—almost. There's only one way this thing can go south, and that's if … well, no, that can't happen. Can it? You don't really think that can happen, do you?

Anyways, apart from this election farce, I do what I say I'm gonna do, okay? And I promised this very odd editor character that I'd preview this issue of the *Messenger,* so here goes. This issue is stuffed with articles on front-burner topics. Rich Saks updates us on the volatile battle over voter ID laws. Chief Judge Maxine White and Judge Mary Triggiano portray the crisis in juvenile corrections, as illustrated by the Lincoln Hills School debacle. Sally Barrientes argues that 17-year-olds should be tried as juveniles, not adults, on first-time, non-violent charges. Sheridan Ryan evaluates the popular "zero tolerance" policy in the context of violence at healthcare facilities. Jim Santelle examines the roots of the current justice system in Iraq. Tom Reed reports on grants to and innovations by Milwaukee County's criminal justice system.

Our friends at Michael Best report on a new rule governing small drone operation, and new IRS rules on same-sex marriage in light of recent U.S Supreme Court cases. On the practice front, Jim Smith and Amy Wochos alert us to new civil procedure rules designed to protect confidentiality in court filings. Greg Hildebrand profiles the prolific Judge Triggiano, and we lament the departure of the effervescent Britt Wegner from the MBA. Regular contributor Doug Frazer offers a primer on appeals of property tax assessments, and State Bar President Fran Deisinger chips in with a movie review.

All this and more combine to Make the *Messenger* Great—Again.

I hope you enjoy this issue of the *Messenger,* along with the delicious fall season you good folks have up there in Wisconsin, which by the way I sincerely need to lose, okay? Oh, and one more thing this pathetic editor fellow asked me to tell you is that if he doesn't offend somebody some time, he feels like he isn't doing his job. Hey, I'm with you there, buddy.

—D.T.

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Three Recent Grants Support Reform in Milwaukee's Criminal Justice System

Attorney Thomas H. Reed, Office of the State Public Defender, Milwaukee Criminal Trial Division

Milwaukee County has earned a national reputation for implementing significant reforms to its criminal justice system. Using a series of grants from the National Institute of Corrections' (NIC) Evidence-Based Decision Making in Local Criminal Justice Systems Initiative, Milwaukee has become a leader in adding validated risk and needs screening and assessment to several key decision points in the system. This new approach has enhanced existing practices and allowed a readier identification of the most effective interventions for individuals facing criminal charges.

These reforms have led to a Universal Screening Program for every defendant prior to his or her initial appearance. Information derived from a validated screening tool is available at the first appearance before a court commissioner or judge. This information is then used to guide decisions about pretrial release and participation in several programs, including Drug Treatment Court, Veterans' Treatment Initiative, diversions, and deferred prosecution agreements. Another innovative use of this information involves the concept known as Dosage-Based Probation. This represents a new model to incentivize certain defendants to complete the work necessary to stabilize their lives and behaviors after sentencing in exchange for a reduced period of supervision. These alternatives are not typically used in any case in which a firearm, interpersonal violence, or drug trafficking is involved.

Due to its demonstrated commitment to reform, Milwaukee County was selected from over 190 jurisdictions to compete for a grant from the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge. The county was one of 11 sites selected to receive implementation funding of $2 million plus substantial technical assistance. The focus of the MacArthur grant is on reducing the unnecessary population of local jails. Studies have shown that too often, individuals who pose little public safety risk get trapped in jail just long enough to lose many of the assets necessary to succeed. This can result from mental illness, addiction, or poverty. "The way we misuse and overuse jails in this country takes an enormous toll on our social fabric and undermines the credibility of government action, with particularly dire consequences for people of color," said Julia Stasch, President of the MacArthur Foundation.

Implementation plans involve reworking the interface between criminal justice agencies and behavioral health services in Milwaukee County. In-depth analysis reveals that many individuals with chronic mental illness cycle between these systems at great cost to their mental and physical health, and often are recipients of care at the most expensive points. The grant provides substantial funding to assist in addressing this persistent problem. The grant also provides funding to improve the data systems necessary to achieve better integration of services.

Trauma lies at the heart of many problems in the criminal justice system. The MacArthur grant challenges Milwaukee County to begin to analyze and address this problem. A significant effort involves improving the way trauma is understood when someone enters the criminal justice system. Work on this problem is expected to have a significant preventative effect, which may decrease the likelihood that individuals will behave in ways that deepen their connections to the criminal justice system. The City of Milwaukee received a $5 million grant from SAMHSA (Substance Abuse and Mental Health Services Administration), a branch of the U.S. Department of Health and Human Services, to increase its capacity to address trauma. This grant was designed for cities affected by significant violence and social unrest. The MacArthur and SAMSHA grants offer the hope that Milwaukee can become a model of how best to reduce traumatic effects that often lead to criminal justice system involvement.

Finally, the NIC has awarded the State of Wisconsin and Milwaukee County a phase 6 grant to continue the work of transforming both local and statewide criminal justice systems into ones that make increasingly wide use of these new approaches.

There is no magic solution to the problem of crime in our communities, and it would be a mistake to believe that the reforms supported by these grants will change things overnight. But evidence-based medicine has done much to improve health, and early data demonstrate that the use of new information and approaches in criminal justice offers substantial promise. Milwaukee continues to be a leader in these efforts.

Member News

Lauren E. Maddente, J.D. 2016, *cum laude,* Marquette University Law School, and B.A. Criminal Justice 2012, *cum laude,* University of Dayton, has joined Fox, O'Neill & Shannon in Milwaukee as an associate. Lauren provides legal services in the firm's business and litigation practice groups.

Volunteer Spotlight

Jon Christiansen

Jon Christiansen practiced for 36 years at Foley & Lardner as a commercial litigator with emphases in distribution and franchise law. He retired in 2012, and now regularly volunteers at the Milwaukee Justice Center's Brief Legal Advice Clinic, providing counsel and referrals regarding civil actions and proceedings in Milwaukee County Circuit Court.

"Our clients at the MJC are people who almost always are in great need, whether they have been evicted from an apartment, have lost their employment, or are simply owed money, without which they cannot make ends meet," Jon observed. "While we can't always provide a complete solution to every problem, it is very rewarding to help the client understand his or her rights and how the legal system works." This work is important, Jon says, because "MJC clients can almost never afford to retain private counsel, so the MJC is their only avenue to obtain legal advice."

Jon has also been very active with a national conservation organization. He has served as chairman of its board, and now volunteers as the organization's general counsel.

Message From the President

Attorney Andrew J. Wronski, Foley & Lardner

If you're anything like me, from time to time you lose sight of what makes our profession special. Amid the grind of e-mails, phone calls, billable hours, collections, and client demands, our day-to-day work often feels more like a job than a vocation. It can be hard to find meaning and personal fulfillment in those hectic moments. Sometimes, it's easy to forget why we chose the law in the first place. I want to share with you two recent experiences that reminded me in a profound way.

I met Sam (named changed) at the Justice Center. Sam is in his 80s and worked hard his whole life, mostly as an HVAC repairman. About 25 years ago, he found his version of the American Dream when he bought a house in Milwaukee where he could both live and keep his shop. Sam loves that house; it is the embodiment of his life's work. After Sam retired, the house started to show its age and needed more maintenance than Sam could handle and more than his monthly social security check could cover. A few years ago, the roof started to leak. Sam managed as best he could and even got some quotes to fix the leaks, but they were far more than he could afford. Desperate, Sam signed a handwritten "contract" with an unscrupulous contactor who "gave him a deal." By the time the contractor was done, Sam's few savings were gone, and the contractor turned what had been small leaks, which could be managed with buckets, into a steady stream of water through Sam's kitchen and bedroom. With no money and nowhere to go, Sam stayed in that house even as mold and moisture damage took over. Sam slept in his car in the garage—the only safe, dry space he had.

Someone finally convinced Sam to come to the Justice Center for help. As he told me his story and showed me pictures of the home, I struggled to maintain my composure. We talked about what social services and safe housing options might be available. I wanted to help Sam leave his home. Sam wanted to stay. He wanted to sue the contractor and make him repair the damage he caused. There was no way Sam could successfully navigate the system *pro se,* so my firm took the case *pro bono.* After we filed suit, the contractor filed for bankruptcy. I explained the slim prospects for recovery, but Sam wanted his day in court. We filed an action to have the debt declared non-dischargeable. Sam was an engaged and conscientious client. He gave a deposition. He ably helped prepare the case. And, on the day of trial, he took the stand and told his story, truthfully and passionately, fighting back tears.

I would like to tell you that we won and collected a judgment that changed Sam's life. We lost the trial. We didn't collect any money. It seemed clear, however, that we did in fact change Sam's life. As we left the courtroom, he thanked our trial team and revealed that he never expected to get any money from the contractor. He had to stand up for himself, he said. He had to see it through. After more than two years living in truly horrible conditions, Sam was ready to leave the home he loved. The trial brought him closure and peace of mind. Sam had done everything possible to save his home. He was no longer a victim, because he fought back. He was proud of himself and deservedly so.

I also met John (changed that name, too) at the Justice Center. John was a veteran and a senior citizen with a housing problem. His landlord had given notice that his lease would not be renewed, and John needed a new place to live. A few years earlier, however, John had a dispute with another landlord who sued him in small claims court seeking an eviction. As John described the facts of that case, the landlord's claims were frivolous. John could probably have filed a counterclaim but was unrepresented and never did. Apparently, the landlord (or the court commissioner) agreed that the eviction claim lacked merit, because it was dismissed immediately. Years later, however, the fact that John was sued by a landlord was still reflected on CCAP, even though the docket also showed the dismissal and no further proceedings. Two prospective landlords had turned down John's applications and he was convinced that it was because he "had a record." John was angry. He wanted to file suit to clear his name and get the case purged from CCAP.

John was pretty upset when I told him, after looking at the issue, that a purge was not something we were likely to get done, and certainly not in the short time frame John had in which to find a new apartment. John felt wronged, disrespected, and helpless. We talked for a long time that day. I printed out copies of the entire CCAP record for him and walked him through how to explain that action to a potential landlord. We also found some residential housing services at the VA that could offer assistance. Mostly, however, we just talked about his service; how my father was a veteran, too; John's time at the VA; and how poorly he felt "the system" had treated him. I listened. I thanked him for his service. I emphatically agreed that he and all veterans deserve better. He heard that there are many others—certainly including some landlords—who feel exactly the same way. We shook hands. When he left, John didn't seem angry and he certainly didn't seem helpless. He seemed satisfied that someone took the time to hear him out, and appeared optimistic about the plan we laid out together.

From an objective standpoint, I did not accomplish much for either Sam or John. I did not win any money for Sam. I did not identify a way to promptly purge John's CCAP record. I don't know if John found a new apartment. I tried, but really didn't solve their legal problems. I am absolutely certain, however, that I helped both men in some way. I listened to them, and I helped them use the legal system to stand up for themselves. I helped them reclaim some control and, with it, some dignity. Each of them just wanted a fair shake from the system and, in the end, each felt that he finally got one. That wasn't everything, but it was something, and something important.

Truth be told, those men helped me more. They reminded me why I chose the law and why I love being a lawyer. They reminded me what is unique and special about our profession—we give our clients a voice and help them stand up for themselves. That is an important responsibility but also a wonderful gift. I remember now. Thank you, Sam and John.

Upcoming Events 2016-2017

Thursday, October 27
State of the Court Luncheon
11:30 a.m. – 1:00 p.m.
Wisconsin Club
900 West Wisconsin Avenue

Thursday, October 27
Pro Bono Cocktail Reception
5:30 – 7:30 p.m.
Milwaukee Bar Association
424 East Wells Street

Thursday, November 17
Law & Technology Conference
7:00 a.m. – 7:00 p.m.
Italian Conference Center
631 East Chicago Street

Tuesday, February 7
Judges Night
5:30 – 8:00 p.m.
Grain Exchange Room
225 East Michigan Street

Judge Mary Triggiano: Changing Business as Usual

Attorney Gregory M. Hildebrand, Hansen & Hildebrand

Judge Mary Triggiano views her role from the bench as that of a public servant. What she has become, however, is much more than a public servant; she is an innovator in how the courts engage, interact with, and serve the public.

Judge Triggiano began her career in private practice at Reinhart Boerner Van Deuren, and soon began taking on *pro bono* cases as a way of giving back. After six years in private practice, she moved to full-time public service as coordinator of the Volunteer Lawyers Project at Legal Action of Wisconsin, and later became Legal Action's managing attorney. In 2004, her public service led her to the bench, to which she was appointed and then elected and re-elected as a Milwaukee County Circuit Court judge. In her dozen years on the bench in domestic violence and children's court rotations, she has expanded the court's role in serving the public and made unique and meaningful differences in the lives of many in the Milwaukee community.

Judge Triggiano recognizes that people who appear in court are often at the end of very long, and frequently traumatic, experiences. Sometimes that trauma is life-long and can extend over generations. Judge Triggiano's most recent initiative is bringing "trauma-informed care" to the Milwaukee court system. She describes this approach "not as a program or a project, but a philosophy and way of being." This philosophy has transformed her approach to cases in children's court and the Family Drug Treatment Court (FDTC). FDTC, the first program of its kind in Wisconsin, began operation in 2011 when Judge Karen Christenson and other professionals working in the children's court developed alternatives to help families impacted by alcohol and drug addictions. Judge Triggiano took over responsibility for FDTC in 2013.

FDTC is a voluntary program designed to break the cycle of substance abuse by providing family-centered substance abuse treatment and supportive services to parents with the ultimate goal of improving safety, well-being, and stability for children. FDTC employs a team approach to fully support parents and children instead of a traditional "consequence based, sanction approach," says Judge Triggiano. She has learned that the key is understanding that often "offenders experience neglect and trauma in their childhoods and development that impacts their health and the adults that they become." Only with this systemic shift can change occur to help participants make progress.

In FDTC, the judge is part of a support team whose members include the guardians *ad litem,* prosecutors, case managers, recovery support coordinators, and even family and friends. Judge Triggiano has found that this trauma-informed approach has led to more successful long-term outcomes for families than do traditional court proceedings. Ultimately the judge must make dispositional orders, but during the process, the team strives to understand each parent's history—almost always featuring years of abuse, neglect, and trauma—to better identify stressors for relapse, as well as resources and solutions to assist parents in maintaining sobriety from alcohol and drugs, with the goal of reunifying parents with children. Judge Triggiano notes that the goal "isn't punishing wrongs, but improving lives" and working to end the trauma cycle.

Judge Triggiano recognizes that sobriety is a slow process, and sees a lot of people "who want to go too fast." She encourages participants to first begin by taking care of themselves, and counsels them that "only when they take care of themselves can they take care of their children." Relapse is seen as a normal part of the treatment process. Judge Triggiano is realistic in understanding that people need to have an opportunity "to get on track, accept the setback, and move on." The most satisfying part of her role in FDTC is seeing parents graduate from the program, get clean, become reintegrated in society—and, most importantly, reunify with their children.

Judge Triggiano also continues to hear traditional CHIPS and termination of parental rights cases in children's court. As presiding judge of that division, she serves an administrative role and is often "putting out fires" within the system. She also oversees the Healthy Infant Court, which, similarly to FTDC, seeks to develop safe, stable homes for children; and the Unification Court, which addresses overlap and potentially conflicting orders in different divisions. Each of these initiatives reflects Judge Triggiano's career-long commitment to helping courts become a conduit for effective service to the needs of our community.

In August of 2015, Chief Judge Maxine White appointed Judge Triggiano as deputy chief judge of the Milwaukee court system, providing her new responsibilities and additional opportunities to promote systemic changes.

Judge Triggiano believes that everyone in her court is important and that no one is more important that anyone else. She expects attorneys in her courtroom to "be prepared and communicate often with your client." She believes that effectively serving as a legal counselor, problem-solver, and advocate requires listening to each client's story and understanding his or her perspective. Judge Triggiano also supports mediation and collaborative practice to assist clients and lawyers in reaching family-focused resolutions. She encourages attorneys to see their role in improving the lives of their clients, the legal system, and our community.

Judge Triggiano states: "The best jobs I have ever had involve giving back and making the community better." Her caring and innovative work as a judge exemplifies her dedication to community service.

Welcome
New MBA Members!

James Cotter, *Sisson Law Offices*
Jacob Coz, *Marquette University Law School*
Colin Drayton, *Burbach & Stansbury*
Andrea Goode, *American Family Mutual Insurance Company*
Katie Hanley, *von Briesen & Roper*
Devin Hayes, *von Briesen & Roper*
Trace Hummel, *von Briesen & Roper*
Thomas Kallies, *Kohner, Mann & Kailas*
Susan Lund, *Legal Action of Wisconsin*
Joseph Miller, *Ardisam Inc.*
Frank Pasternak, *Pasternak & Zirgibe*
Michael Riopel, *von Briesen & Roper*
Ryan Spott, *Davis & Kuelthau*
Clyde Taylor, *Wisconsin Institute for Law & Liberty*
Honorable Paul R. Van Grunsven, *Milwaukee County Circuit Court*
Kristen Wetzel
William Wetzel, *Cross Law Firm*

Time for "Raise the Age" Legislation in Wisconsin

Attorney Sally Barriente, Office of the State Public Defender, Milwaukee Juvenile Division

It is an injustice to youth and the community to prosecute 17-year-olds automatically in the adult system. Mary (not her real name) was unable to complete her independent living program or continue with school because she was arrested and put on probation in adult court for a non-violent crime shortly after she turned 17. She received services in the juvenile system under a CHIPS (Child in Need of Protection and Services) order that was due to expire when she turned 18. Unfortunately, the adult system is more geared toward punishment over other objectives; on the other hand, the juvenile system works more to provide services that can benefit a young person and, therefore, in the long run benefit the community.

I have been an assistant state public defender for almost 27 years. SPD supports the "raise the age" movement and has supported recently proposed Wisconsin legislation to treat all first time, non-violent 17-year-olds as juveniles. Anyone charged with a violent offense as defined by the bill, or who has a prior adjudication, would be treated as an adult. The bill does not remove the ability to seek a waiver into adult court.

This legislative proposal is currently held up due primarily to fiscal concerns. We recognize that it would have some fiscal impact on Wisconsin counties, but we believe ultimately it would be well worth the investment.

Wisconsin is in the decreasing minority of states (nine of them) where all 17-year-olds are treated as adults in the criminal justice system. Other states have changed that rule, such that the majority is now in line with the national "raise the age" movement.

Stakeholders in the justice system and community have become aware of neurological evidence of major differences between a young person's brain and an adult brain. Scientific evidence that the brain lacks maturity under age 25 has become widely accepted. The most recent research on the adolescent brain indicates that it is still developing and maturing during the teen years, reasoning and judgment continue to develop well into the early to mid-20s, and brain maturation peaks at 25. As an attorney who represents individuals of all ages, the differences have always been very evident to me.

I have been involved in many cases like Mary's, where prosecuting 17-year-olds in adult court has led to serious repercussions. 17-year-olds in jail or prison are likely to be exposed to hardened and sophisticated adults and are very vulnerable. I have had many 17-year-old clients choose segregation to avoid the general population.

We can be smarter and more effectively provide for a safer community by treating first-time, nonviolent 17-year-olds as juveniles rather than adults. Wis. Stat. § 938.01 reads in part: "It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of the law and equip juvenile offenders with the competencies to live responsibly and productively." Those under the age of 18 are required by law to attend school, but jails are not required to provide them with education. Without the necessary education and a high school diploma, it is harder for young people to obtain employment. Moreover, the adult criminal justice system moves more slowly than the juvenile system, and therefore 17-year-olds and other school-age children are likely to remain incarcerated for a much longer amount of time, falling so far behind that it is almost impossible to catch up. In contrast, juvenile detention facilities are required to provide schooling. Depending on the length of the detention, children can earn school credits.

Additionally, the fact that a defendant is even charged with a crime in adult court is very easily accessible, which also increases the difficulty of obtaining a job. The impact of an adult criminal charge has lasting effects on children. The 17-year-old without a diploma and with an adult charge or conviction will have difficulty living "responsibly and productively." In contrast, a juvenile court record is, for the most part, confidential. Greater employment means less crime.

As for Mary, she was placed on probation in the adult system. Her probation officer would not work with us in the juvenile system to try and coordinate her probation meetings with her school and juvenile services. With the opportunity that "raise the age" would provide her, Mary's prognosis for success would be much brighter. It is ironic, not to mention unjust, that in order to avoid serious consequences in adult court for "noncompliance," she had to give up services in juvenile court, thereby becoming less "equipped" to deal with life.

Property Tax Assessments and Appeals to Municipal Boards of Review

Attorney Douglas H. Frazer, DeWitt Ross & Stevens

Lawyers frequently are asked about property tax appeals. It's useful to have something quick and helpful to say. Property owners have a hard time winning these appeals because they are ill-prepared. Let's help our friends and neighbors even the playing field.

Property owners pay real property tax to fund the operations of taxing jurisdictions: the state, Milwaukee County, the Milwaukee Area Technical College, the Milwaukee Metropolitan Sewerage District, our school districts, and of course the municipality. The municipality is called the taxation district—it levies and collects tax for the various taxing jurisdictions. The amount of tax is based on the value of the property multiplied by the tax rate, expressed in terms of dollars per $1,000 of value and commonly referred to as the "mill rate."

The municipal assessor is responsible for determining the January 1 market value of each property in the municipality annually. Wis. Stat. § 70.32(1). The assessor considers information from many sources. In the event of a recent sale, new construction, new or remodeled improvements, or a revaluation (the determination of new values for all properties), the assessor may want to inspect the property. If a property owner denies the assessor entry, the assessor values the property using the best available evidence. Other evidence of a property's value includes a recent sale, comparable property sales, location, depreciation, legal restrictions, and general economic changes in the community.

City, village, and town Boards of Review (BOR) are responsible for hearing cases alleging incorrect real property valuations and correcting any errors it discovers in the tax roll. BOR procedures are described in Wis. Stat. § 70.47. The BOR convenes annually, with the first meeting in May or early June.[1]

If property owners object to a change in assessment, they can seek a review by the BOR. It is a quasi-judicial body: members sit as judges to hear evidence. Generally, members are determined by ordinance and often include elected officials, municipal staff, and private citizens.[2]

Whenever the assessor changes the total assessment the owner must be notified in writing at least 15 days before the BOR convenes. The notice contains information about the upcoming BOR meeting and procedures for objecting to the assessment.

A property owner can and probably should contact the assessor directly to discuss the matter. Issues are often resolved through this informal process.

A property owner unable to meet with the assessor can attend what's called the "open book." This is a specified date and time, before the BOR convenes, when the completed assessment roll is open for examination. The assessor is present and is allowed to make any changes necessary to perfect the assessment roll.

A property owner who continues to object may formally appeal the assessment to the BOR by:

- Providing written or oral notice of intent to appeal to the BOR clerk at least 48 hours before the first scheduled BOR meeting.
- Filing a signed form of objection to property assessment with the clerk within the first two hours of the BOR's first scheduled meeting. If the form of objection is proper, the BOR will schedule a hearing and provide at least a 48-hour notice of the hearing to the objector, the municipal attorney who is present as an advisor to the BOR, and the assessor, unless 48-hour notice is waived by all parties.

The BOR does not independently determine valuations, nor does it adjust valuations on any basis other than the sworn testimony provided. It reviews written and oral testimony provided at the hearing, which is the sole basis for finding a valuation to be in error.

It's often difficult to prevail because the BOR is required to accept the assessor's assessment as correct absent competent sworn testimony, not contradicted by other evidence, which proves the assessment is incorrect. In practice, this means that sworn testimony should be supported by documentary evidence that the property is over-assessed compared to sales in the municipality or other relevant data. The BOR may accept sworn written statements and sworn testimony by telephone in limited circumstances.

Documentary evidence could include a recent arm's-length sale of the subject property, an appraisal of the property, or recent sales of comparable properties. Information presented on comparable properties must be adjusted to the subject property as appropriate. The BOR considers all testimony relating to value, such as size and location of the lot, size and age of the building, original cost, depreciation and obsolescence, zoning restrictions and income potential, presence or absence of various building components, and any other conditions affecting the property's market value.

It should be noted that while the assessor determines separate values for land and improvements, the BOR can only consider the total value of the property.

As mentioned, the BOR adjusts value based solely on the testimony presented. Parties are allowed to cross-examine each other. The BOR may question the parties as part of the hearing during the testimony phase. All deliberations are conducted in open session.

Several statutory options exist for appealing BOR determinations. Each has very specific procedural requirements. The most commonly invoked is a certiorari petition to the circuit court. The circuit court limits its review to the BOR record. *See* Wis. Stat. § 70.47(13).

A second option is a claim of excessive assessment. This involves paying the tax up front, filing a claim with the municipality, going before the BOR, seeking review by the governing body, and then filing an action in circuit court. A circuit court exercises *de novo* review and can conduct a court trial. *See* Wis. Stat. § 74.37.

A third option, if a variety of requirements are met, is an administrative appeal to the Department of Revenue. *See* Wis. Stat. § 70.85.

Here are key tips and things to know about the process of challenging an assessment:

- An objector may designate a representative to appear on the objector's behalf.
- The best evidence of value is generally a recent sale price of the subject property or recent sale prices of comparable properties

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Milwaukee County Officials Address Juvenile Corrections Crisis

Honorable Maxine Aldridge White, Chief Judge, and Honorable Mary E. Triggiano, Deputy Chief Judge and Presiding Judge, Children's Division, Milwaukee County Circuit Court

Derek[1] is a 15-year-old from the City of Milwaukee. He was removed from his biological mother's care at a young age due to her drug dependence and allegations that his mother's boyfriend sexually assaulted Derek repeatedly. He was adopted at age 6 by his foster mother. At age 10, Derek was back in the "system," and diagnosed with a host of mental health disorders. He was charged with a delinquent act, and child welfare became involved as his adoptive mother could no longer handle his behavior in her home. Derek bounced around in out-of-home placements, including treatment foster homes, shelters, group homes, and residential treatment centers, for the next five years. While in out-of-home care, Derek continued to commit misdemeanor offenses and child welfare remained involved. Ultimately, Derek was charged with a felony when he struck a teacher who had blocked his exit from a classroom. When no community-based placements would accept him, Derek was sent to Lincoln Hills School, the state's only secure correctional facility for boys.

When Derek arrived at Lincoln Hills School, he struggled and was placed in the security cottage (which is solitary confinement) for several weeks at a time. Derek had no family come to visit him. In fact, he had no contact with the community outside of Lincoln Hills, except for professionals assigned to his case. Only five months after arriving at Lincoln Hills, Derek reported that he was physically assaulted by three staff members when he was too slow to return to his cell and mouthed off to the staff. Two of those staff members have been terminated from their employment with the Department of Corrections. When Derek was 17, he was released from Lincoln Hills, placed in a group home, offered minimal services, and still had no family support. Within three months of his release from Lincoln Hills, Derek was arrested and charged as an adult with a series of serious felonies, and is now facing time in prison.

Sadly, Derek's story is a story typical of too many Milwaukee County young people.

For the past decade, the number of juveniles placed in a secure correctional setting has declined significantly, due in part to an increase in community-based mental health services for youth and a focus on evidence-based programs. Because of reduced numbers, the Department of Corrections closed Southern Oaks School for Girls and Ethan Allen School for Boys in 2011, and their populations were transferred to Lincoln Hills School for Boys and Copper Lake School for Girls—facilities located more than 200 miles from Milwaukee in Lincoln County.

That decision has proven to be a disaster, as many predicted. In December 2015, news broke that Lincoln Hills and Copper Lake Schools were the subjects of investigations regarding allegations of physical, emotional, and sexual abuse of the young people living there. A John Doe investigation was launched by the circuit court in Lincoln County but subsequently closed. Several law enforcement entities have been involved in the investigations, including the United States Attorney for the Western District of Wisconsin, the Wisconsin Department of Justice, and the FBI. The results of those investigations have not been released to the judiciary, Milwaukee County officials, or the public, and at least one—the United States Attorney's investigation and grand jury proceedings—is believed to be ongoing.

Large Juvenile Correctional Institutions Do Not Work

National research has demonstrated that large congregate juvenile care facilities, such as Lincoln Hills, Ethan Allen, Southern Oaks, and Copper Lake Schools, are unsuccessful and have dismal outcomes in reducing recidivism for the juveniles they serve.[2] The current setup of Wisconsin's juvenile correctional system is contrary to much of what researchers have found about reparation, adolescent brain development, adolescent behaviors, and the need for family and community support.[3] The outcomes at Lincoln Hills reflect this flawed approach. According to the Division of Juvenile Corrections 2014 Annual Report, Lincoln Hills has a 65% three-year recidivism rate, demonstrating that our juveniles are not consistently receiving the individualized treatment and care they need.[4]

Juvenile correctional facilities also fail to understand the impact of trauma on the adolescent brain and how it can completely derail a child's judgment, impulse control, decision-making, and emotional stability. Childhood trauma is common and, if left unaddressed and not met with understanding and trauma-appropriate responses from adults, can have harmful, long-term consequences, including serious impairments in mental and physical health.

Every day, Milwaukee County judges are asked to protect children by removing them from the homes of their abusive and neglectful parents. On those same days, judges also may be asked to send a juvenile offender to one of our juvenile correctional facilities where similar allegations of abuse and neglect have been made. When judges make these decisions, they are required to balance the need to protect the public with a juvenile's need for care and treatment—with the ultimate goal of ensuring that the juvenile is more capable of living productively and responsibly in the community.[5] With the serious pending abuse allegations at Lincoln Hills and Copper Lake and the unknown results of the investigations, judges are in an untenable position, as many of these young people have no viable alternate placements. Placement at Lincoln Hills and Copper Lake is often the only option available to judges when a juvenile is in need of secure care.

A Better Approach

To serve our youth and community, the Milwaukee County judiciary, the Milwaukee County Executive's Office, the Milwaukee County Board of Supervisors, and other justice stakeholders have come together to find a better approach:

1. Less young people entering the system

"Early" matters. Judges, district attorneys, public defenders, county officials, law enforcement, social workers, mental health providers, and educators must first focus their attention on the front end of the system. Armed with the knowledge of adolescent brain development and the impact of trauma on the developing brain, we need to focus more resources on early intervention and prevention efforts geared toward our youngest members, including infants and toddlers. The formative years of birth to age 5 are critical for the development of intelligence, personality, and social behavior. If the first time that our "system" is attempting to intervene with a young person and his or her family is after an arrest, we have missed a multitude of opportunities to ensure that person's well-being and the community's safety.

continued p.21

Same-Sex Marriage Defined by IRS

Attorneys Carrie E. Byrnes and Jorge M. Leon, Michael Best

Just before Labor Day weekend, the U.S. Department of Treasury and the Internal Revenue Service released final regulations amending the definitions of "marriage" and "husband and wife" in the wake of the Supreme Court's *Obergefell v. Hodges* decision, which legalized same-sex marriage, and *Windsor v. U.S.* decision, which struck down section 3 of the Defense of Marriage Act. The proposed regulations, issued in October 2015, were followed by several comments and a request for a public hearing (which the requestor did not attend, and at which no one else asked to speak). The comments prompted minor refinements to the proposed rules, with the final regulations providing as follows:

- For federal tax purposes, the terms "spouse," "husband," and "wife" are defined as an individual lawfully married to another individual. These terms do not include individuals who have entered into a registered domestic partnership, civil union, or other similar relationship if that relationship is not denominated as marriage under applicable law in the jurisdiction where the relationship was entered into, regardless of where the couple lives (i.e., domicile).
- "Husband and wife" is defined as two individuals lawfully married to each other.

The foregoing definitions apply regardless of the taxpayers' genders.

Building on Revenue Ruling 2013-17, which adopted the "place of celebration" rule over the "place of domicile" rule for purposes of determining the validity of a same-sex marriage, the final regulations further provide:

- A marriage between two individuals entered into in and recognized by any state, possession, or territory of the United States will be treated as a marriage for federal tax purposes, regardless of the married couple's place of domicile. This standard applies regardless of the term used in the Internal Revenue Code.
- Foreign marriages are discussed separately from domestic marriages to ensure clarity on the treatment of foreign marriages. Under the foreign marriage rule, two individuals entering into a relationship denominated as marriage under the laws of a foreign jurisdiction are married for federal tax purposes *if* the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States. Under this construction, it is sufficient for a couple who is married outside the United States to be treated as married for federal tax purposes in the United States if a single jurisdiction would recognize them as married. Thus, a review of pertinent laws of all states and territories within the United States will not be required.

Notably, the IRS declined to adopt certain suggestions submitted by commenters, including:

- That the regulations specifically reference "same-sex marriage" such that they would be gender-neutral and avoid any potential issues of interpretation. The IRS reasoned that the regulations are clear and did not present any potential for confusion. Furthermore, the agency concluded that adopting this comment would potentially undermine the goal of eliminating distinctions in federal tax law based on gender.
- That the regulations clarify that common-law marriages of same-sex couples will be recognized for federal tax purposes. While the statutes of certain states recognizing common-law marriages only do so for opposite-sex couples, the Treasury and IRS opined that the Supreme Court's holdings, coupled with prior IRS guidance, make clear that common-law marriages are valid, lawful marriages for federal tax purposes. While the agencies did acknowledge that some states have laws "on the books" prohibiting same-sex marriage (including some states that allow common-law marriage), they are "unaware" of any state enforcing those statutes or otherwise prohibiting same-sex couples from entering into common-law marriages. Accordingly, the Treasury and IRS declined to make any further clarifications on this issue.

While employers who sponsor benefit plans should already have modified their plans and procedures to come into compliance with *Obergefell, Windsor,* and Revenue Ruling 2013-17, the finalization of these regulations brings refinements to the rules that those working with benefit plans should capture. For example, how are foreign marriages treated for imputation of income in a group health plan setting? In addition, how are same-sex common-law marriages reviewed under the qualified plan joint and survivor rules? A careful review of the final regulations' definitions, as compared to current plan documents and administrative practices, is recommended.

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Golf Outing 2016

The MBA Foundation hosted its 28th Annual Golf Outing on August 3 at the Fire Ridge Golf Club in Grafton. Proceeds benefited the Milwaukee Justice Center.

◀ *(left to right)* Brian Smigelski, Matt Falk, Dave Peterson, Fire Ridge Pro

▶ *(left to right)* Matt Falk, John Gelshenen, Brian Smigelski, Dave Peterson

The Andrus Intellectual Property team won the whole shootin' match.

2016 MBA Foundation Golf Outing Awards

Winning Team: Andrus Intellectual Property Law (Peter Holsen, Joseph Kuborn, Aaron Olejniczak, Kevin Spexarth)

Closest to the Pin: Cathy La Fleur, La Fleur Law Office
Closest 2nd Shot: Joe Sarmiento, Meissner Tierney Fisher & Nichols
Longest Drive (men): Adam Finkel, Weiss Berzowski
Longest Drive (women): Justice Annette Ziegler, Wisconsin Supreme Court
Longest Putt: Max Stephenson, Gimbel, Reilly, Guerin & Brown

(left to right) John Rothstein, Brandon Gutschow, Patrick Murphy

(left to right) Adam Finkel, Bryce Cox, Derek Goodman, James Burrows

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The Reel Law

Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Michael Clayton

Directed by Tony Gilroy
2007; 119 minutes

Michael Clayton is a fine modern suspense film about four lawyers gone wrong in different ways. As the title character, George Clooney plays a role for which I have some very slight appreciation. Working for a large Manhattan law firm, Kenner, Bach & Ledeen, the former prosecutor's practice has somehow migrated—or mutated—from litigation to something we might call being a fixer. (He calls it being a janitor.) When bad things happen at the firm or to its clients, Clayton is called in, not to apply legal acumen or lawyering in the traditional sense, but instead to triage the problem with cold practical judgment and his law enforcement connections.

The film begins, however, with another of the lawyers in trouble. In a powerful scene of voice acting, we hear a pleading explanation by Arthur Edens, Kenner Bach's lead litigator in a massive toxic tort defense of giant agribusiness client "uNorth." Edens is played by the exceptional British actor Tom Wilkinson, and his explanation of his conduct to Clayton—after Edens has been arrested for stripping naked at a video deposition in, of all places, Milwaukee—suggests that he either has had a psychotic breakdown (not for the first time, it turns out) or a moral self-realization. Or perhaps a mix of both.

Then there is Karen Crowder, the general counsel of uNorth. As brilliantly acted by Tilda Swinton, she wears a brittle veneer of professional control over a roiling interior of terror and inadequacy. Swinton evokes this with a mastery of frightened glance and rigid posture that is almost painful to watch. She won an Oscar for the role. The fourth lawyer is Marty Bach, the senior partner in Kenner Bach. The great director and actor Sydney Pollack, in one of his last roles, gives Bach the cynical gravitas you would expect from the name partner of a mega-firm.

Edens' breakdown follows six years of his life defending uNorth against a multi-billion-dollar class action alleging that a weed killer it sells has lethally poisoned the drinking water on small Midwestern farms. Edens has learned that it is true, and he has the proof. At the same time, he begins to obsess about one of the plaintiffs, a young Wisconsin farm woman, and it is at her deposition that he breaks, stripping to his socks and professing his love.

The firm sends its fixer, Clayton, who has seen Edens through a similar episode in the past. But Edens escapes Clayton's hotel room into a snowy Milwaukee night and returns to Manhattan. Clayton, meanwhile, is dealing with his own crisis: economically trapped in a nebulous non-partnership track, he has invested $75,000 in a bar with his addict brother, and lost it all. Worse, he owes the money to a loan shark.

Edens' breakdown also sets Crowder, the uNorth general counsel, spinning into a moral abyss. Desperate to reach a settlement on the "bet the company" case, Edens' apparent intent to expose uNorth's responsibility leads her first to demand an explanation from Clayton and Bach, then to send a security team to find and spy on Edens. And after learning that he has a copy of a secret company memo demonstrating knowledge of its product's toxicity, she makes an even more terrible decision.

Like uNorth, Clayton is also searching for Edens (who won't answer his calls) under orders from Bach to find him and have him committed. When Clayton finally finds him, wandering near his Soho loft, he beseeches Edens to let him help. "I'm not the enemy," Clayton tells him. Edens coldly responds, "Then what are you?"

The next day, Clayton and his colleagues at the firm learn that Edens has committed suicide. The partners gather and Bach admits to Clayton that as much as they loved Edens, his death is "a lucky break" that will spare the firm millions in returned fees and a malpractice suit by uNorth. Clayton is devastated, fearing that their confrontation pushed Edens over the edge. But then he learns that Edens had arranged for the Wisconsin woman to come to New York that same day, and asks himself why a suicidal man would do that. He leans on his police connections to get into Edens' loft, where he finds a receipt from a copy store. There he also finds the damning memo; Edens has had thousands of copies printed. Holding a copy, he returns to the firm and confronts Bach—who is unimpressed. "We knew this case stank from the beginning," he says.

The cunning Bach proceeds to offer Clayton the money he needs in return for an "ironclad" confidentiality agreement, and Clayton, as compromised and desperate as all the other lawyers in this story, takes it. But that night, after Clayton makes a depressing "janitor" call on an unrelated and ungrateful firm client, his despair over who he is and what he has done leads him to his own lucky break—and allows him to put all the pieces together. In the final scene, he exploits his own questionable character to spring a trap for Crowder.

This movie reminded me that a well-crafted Hollywood film is a true art form. From production to writing to acting to score, it all works. As a viewer, you always feel you are in the hands of professionals. Most interesting is the narrative structure. While of necessity I have very briefly summarized the plot in a linear way, in the film itself the director Tony Gilroy (who also wrote the script) masterfully arranges the story in a flashback structure. Remarkably, this was Gilroy's first film as a director. He did not waste the assembled talent.

From Hammurabi to al-Mahmoud: A Brief Primer on the Administration of Justice in Modern Iraq

Attorney James L. Santelle

In the region known as Mesopotamia (about 800 miles north of Mecca), the sixth king of the First Babylonian Dynasty, Hammurabi, established one of the world's first known code of laws. His code set forth practical standards and philosophical touchstones for the administration and delivery of justice to the people of his expansive nation, including the fertile crescent of lands defined by the Tigris and Euphrates Rivers. The Code of Hammurabi incorporated some of our earliest notions about the presumption of innocence and the right of all parties to present relevant evidence in support of their positions. About 3,700 years ago, Hammurabi's academics inscribed the 282 laws of the Babylonian Kingdom on 12 tablets.

About 2,400 years later, according to the foundational tenets of the Islamic faith, Muhammad received the first of the scriptures that would be delivered to him over the period of the next 23 years and ultimately assembled together as the Quran. Including the tablets of Ibrahim, the Torah, the Psalms, and the Christian Gospel, the revealed teachings are intended as "a guidance for mankind" and "criteria of right and wrong." (Quran, Chapter 2, Revelation 185.) Muhammad's followers, led by a learned and trusted scribe named Zayd ibn Thabit, first committed his revelations to paper about 1,300 years ago. (On July 6, Muslims celebrated Eid al-Fitr, the conclusion of the month of Ramadan, when Muhammad is said to have first received these scriptures. On October 2, they observed the Islamic New Year in commemoration of Muhammad's migration from Mecca to Medina.)

More recently, a French-educated Egyptian named Abd El-Razzak El-Sanhuri authored the modern Iraqi Civil Code. Based on both the Egyptian and French legal traditions and practices (the latter often referred to as the Napoleonic Code), the Iraqi Civil Code reflects many of the principles of justice that first appeared in the Code of Hammurabi and the Quran.

The post-Saddam regime's administration of justice in Iraq has been substantially entrusted to and animated by the nation's leading jurist and legal academic, Medhat al-Mahmoud, who has served as both the Chief Justice of the Iraqi Supreme Court and the President of the Higher Juridical Council (similar in design and mission to our own Administrative Office of United States Courts).

The rule of law remains intact and vibrant in "the land of the two rivers," even in the midst of profound challenges in the administration and the delivery of justice to the Iraqi citizenry, who confront continuing assaults on their nation's security, safety, and sovereignty. Inspired by Hammurabi, Muhammad, El-Sanhuri, and al-Mahmoud, these are some of the fundamental tenets that reflect both a respect for precious history and a commitment to modernity in its practical trappings:

- A national constitution, approved by referendum in October 2005, that not only creates the institutions of the new republican government in Iraq—including executive, legislative, and judicial units—but also includes assurances of fundamental civil liberties and freedoms of expression, assembly, press, and privacy, among others, while affirming the position of Islam as the official state religion.
- An increasingly professional cadre of police leaders, highly invested in ensuring that on-the-street law enforcement officers are trained in the critically important tasks of collecting and preserving evidence, interviewing witnesses and subjects, responding promptly and rationally to public safety challenges, and serving as genuine servants to the public, without political or religious bias.
- A contemporary criminal code, predicated on a system of laws first enacted in the late 1960s and early 1970s, updated by orders and memoranda of the Coalition Provisional Authority, further amended by the Iraqi Parliament, and administered by an experienced group of judges (both men and women) in long-standing courts and special, terrorism-responsive tribunals.
- Investigative judges who, in criminal proceedings and even some civil actions, compile and organize police reports and evidentiary items with the discretion to pursue additional leads, engage in supplemental interviews of citizens, review relevant portions of the Iraqi Codes, and make preliminary assessments about whom to charge with criminal offenses and how to craft evidence-based civil allegations.
- Law school professors and academic leaders who design and implement curricula for new generations of attorneys who represent parties in both civil and criminal proceedings, increasingly blending lectures on the so-called "Iraqi grammar of law," the particular components of the Iraqi Codes, and broader principles such as due process and equal protection.
- A fundamental—and often publicly controversial—commitment by the judicial leadership to separation of powers, anchored to the foundational notion of judicial independence and the corollary power of judicial review, and exercised regularly by the chief justice and the Iraqi Supreme Court in passing on the constitutionality and procedural legitimacy of parliamentary and executive actions.
- A vigorous package of "legal career paths" according to which law school graduates become (and remain throughout their lives) civil servants, including public prosecutors and defense counsel; attorneys representing parties in private disputes; and judges, who are graduates of the Judicial Training Institute.
- Consistent with the Iraqi Civil and Criminal Codes and the nation's modern constitution, the rights to fact discovery; notice of charges (both criminal and civil); legal representation in criminal proceedings; a presumption of innocence in those proceedings; and confront and question witnesses, typically through judicial officers.
- Trial judges who review the evidentiary files of investigative judges; conduct additional witness examinations (often involving state prosecutors and defense counsel in criminal cases); and resolve private property, contract, and familial autonomy disputes, among many other matters—all subject to review by cassation courts.

Iraqi Chief Justice al-Mahmoud describes the Quran variously as the *al-furqan,* meaning "the discernment," and the *hikmah* or "the wisdom"—acknowledging both its law-giving purpose and its commission to ensure justice for and through the people of modern Mesopotamia. The descendants and inheritors of the legacy of Hammurabi are well-served by their adherence to traditional notions about the rule of law, which are reinvigorated and witnessed daily in the contemporary work of Iraq's private lawyers, scholars, police officers, judges, and civil servants.

James L. Santelle served as the Attorney General-appointed Justice Attaché and then the ambassador-appointed Rule of Law Coordinator at the United States Embassy in Baghdad, Iraq from early 2006 to early 2008.

Pro Bono Corner

The Pro Bono *Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need* pro bono *attorneys. More organizations looking for attorney volunteers are listed in the MBA's* Pro Bono *Opportunities Guide, at www.milwbar.org.*

Celebrate *Pro Bono* at the MBA's Eighth Annual *Pro Bono* Cocktail Reception

Please join the MBA in celebrating the many volunteer hours that area attorneys have committed to representing low-income clients. The cocktail reception will honor the attorneys who achieved recognition in the Wisconsin Access to Justice Commission's *Pro Bono* Honor Society by volunteering more than 50 hours of *pro bono* representation for low-income clients. This reception is a great way to learn about volunteer opportunities with local public interest law firms.

When:
October 27, 2016
5:30 p.m. to 7: 30 p.m.
Program begins at 6:15 p.m.

Where:
Milwaukee Bar Association
424 East Wells Street
Milwaukee, WI 53202

RSVP: Please register at www.milwbar.org, or e-mail Sabrina Nunley at snunley@milwbar.org to express your intention to attend, by October 20.

Britt Wegner Leaves MBA

That's the bad news. The good news is that Britt, the long-time director of the MBA's Lawyer Referral & Information Service, departed for a position as marketing director with Gimbel, Reilly, Guerin & Brown, so she will still be very much a presence in the Milwaukee legal community.

Britt worked at the MBA for almost 15 years. She started as a phone interviewer for the Lawyer Referral & Information Service when she was still in college at the University of Wisconsin-Milwaukee. As she puts it, she "grew into the job." She became the office manager in December 2004, when she graduated from college, and was promoted to direct the LRIS in June 2005. In that year she also started the Waukesha County LRIS, which the MBA administers. In 2007, the MBA's LRIS won the American Bar Association's Cindy A. Raisch Award, which recognizes the enhancement of public service-oriented LRIS programs that provide access for moderate income consumers.

In addition to running the very time-consuming LRIS, Britt wore a dizzying array of hats at the MBA. She was the life-blood of the *Messenger,* beginning with the second issue of its "glossy era" in 2008. She was responsible for the annual Solo and Small Firm Conference in conjunction with the State Bar; the MBA's Mentoring Program; its annual Law & Technology Conference; its Boy Scout and Girl Scout events; its "Choose Law" Program, which places attorney speakers at local schools; and its Speakers Bureau.

Britt, who was born and raised in Bay View, took a bachelor's degree in broadcast journalism and communications from UWM. She then completed a two-year graduate program at the Helen Bader Institute for Nonprofit Management at that school.

Britt is an inveterate world traveler. At last count her expeditions had extended to no less than 20 countries. Her top three are Turkey, Egypt, and Peru. Her criteria: the food, the history, and the people. She insists that the collapse of governments shortly after her visits to Egypt and Thailand, respectively, were mere coincidences. In the interim between the MBA and her new job, she survived an unexpected hiking encounter with a black bear in Washington State. (Of equal note, the bear also survived.) Britt generously shares her international travel savvy by writing for the "Flirting with the Globe" blog (flirtingwiththeglobe.com).

Britt is extraordinarily engaged with the community. Beside writing for the travel blog, she has been a tour leader with Milwaukee Food & City Tours (milwaukeefoodtours.com) for five years. She serves on the board of the Milwaukee LGBT Community Center and as co-chair of the Planned Parenthood Leadership Council. She volunteers with Make a Difference Wisconsin, a program that teaches financial literacy to high school students. She belongs to two book clubs and the Milwaukee Film Club. For nine years she has volunteered her service as the legal guardian of a disabled man, now 26, at the initiative of the Legal Aid Society.

Through all this, Britt is always calm, organized, upbeat, and vivacious. She loves to laugh and is just plain fun to be around. She is also an idea person who consistently thinks outside the box. To cite but one example, "The Reel Law"—the *Messenger's* long-running series of legal-themed movie reviews by cinema expert Fran Deisinger—was Britt's idea.

For those who have been involved with the MBA at any time during the past 15 years, it is difficult to imagine that organization without Britt Wegner. Thanks for the memories, kiddo. Keep in touch.

The Wisconsin Lawyers Assistance Program (WisLAP) provides confidential assistance to help lawyers, judges, law students, and their families cope with problems related to the stress of practicing law.

WisLAP: 24 hour helpline: 1-800-543-2625.

Please call Mary Spranger or Linda Albert with any questions at 1-800-543-2625.

Thank you very much for your support of health and wellness for legal professionals.

For Your Eyes Only: Wisconsin Courts Implement New Confidentiality and Redaction Rules

James Smith, Chief Deputy Clerk, and Amy Wochos, Legal Counsel and Senior Administrator, Milwaukee County Circuit Court Clerk's Office

Privacy and identify theft are major 21st Century concerns. Wisconsin courts now have new tools to address these concerns. On July 1, 2016, three new rules went into effect that apply to confidential information in all documents filed in the Wisconsin circuit courts. These rules are found in Wis. Stat. §§ 801.19, 801.20, and 801.21. They resemble rules used in the federal courts and about 20 other states. Their intent is to enhance personal privacy and prevent identity theft by providing clear guidelines on protecting sensitive information, while ensuring that court officials have access to necessary information in the cases before them. This article briefly describes these statutes.

Wis. Stat. § 801.19 lists the five specific numbers that should be protected in all court documents filed after July 1, 2016:

- social security numbers
- employer and tax ID numbers
- financial account numbers
- driver's license numbers
- passport numbers

Under that section, the filer, when preparing a court document such as a complaint or a motion, should omit reference to these actual numbers, if not required, and should refer to them generically. If the actual number is necessary to the action, it can be submitted on circuit court form GF-241 (available at www.wicourts.gov), which was designed for that purpose. If an existing document containing one of these numbers is submitted as an exhibit or supporting document, the filer should redact the number and file a redacted copy of the document, again filing a GF-241 form if the information is necessary to the action. The clerk's office will scan the redacted document into the court record and destroy the paper. The filer retains the original document containing the confidential number.

E-filing simplifies this process, of course, because the filer submits the redacted document and the clerk accepts it into the court record. Parties can physically block a number on a paper document, scan it, and download it. They can also use various applications to redact numbers on electronic documents.

Failure to redact waives the protection offered by the rule with respect to the filing party's own protected information. The court may, on its own motion or at the request of another party, seal such an improperly filed document and order the filing of a properly redacted document. If the failure to redact involves the protected information of another person, the filer may be subject to sanctions if the court considers the incident (or multiple related incidents) sufficiently egregious.

This statute is prospective only. Parties may, however, file a motion to redact protected numbers in previously-filed documents. Circuit court forms GF-245 and GF-247 are available for use in requesting a court order to redact confidential information in the court record or in a transcript. The moving party must provide the location of the protected numbers; the court or clerk will not search for the numbers in the case file.

Section 801.20 provides a procedure for filing documents that are designated as confidential under statutes, court rules, or case law. A list of such documents is available at www.wicourts.gov, as required by this statute. It is the filing party's responsibility to bring these confidential documents to the clerk's attention using circuit court form GF-246. Of course, court staff will automatically recognize some commonly-filed forms as confidential—e.g., the confidential petition addendum or the family financial disclosure form in family law cases. The GF-246 form is unnecessary for these documents or for documents filed in case types that are themselves confidential by statute. When in doubt, however, the best practice is to file the GF-246 form.

Section 801.21 protects other information in case files that are open records, and which neither of the preceding two sections covers. Section 801.21 describes the process for parties and the court to follow in filing motions to seal. Litigants should use circuit court forms GF-246A and 247B to file such motions. The new rule does not include the standards for the court to apply in deciding the motion to seal; those standards are found in Wisconsin case law.

It is important to note that the filing attorney or self-represented litigant bears the responsibility for following these new rules. Circuit court staff is not required to monitor and evaluate filings for compliance. Milwaukee County Clerk of Circuit Court John Barrett noted, however, that "our staff will certainly work with filers to help them comply. If we notice a potential problem, we will point it out and help the filer find a solution that meets the intent of the new statutes."

For more information, visit https://www.wicourts.gov/services/attorney/redact.htm.

"Zero Tolerance" for Violence and Violent Patients: Sound Policy or Sound Bite?

Attorney Sheridan Ryan, Medical College of Wisconsin Clinical Risk Management

Violence has risen to the forefront of concern in healthcare.[1] Two popular notions—at least in healthcare risk management forums—are that (1) even the sickest of patients understand the consequences of their actions (implying an ability to control behavior), and (2) all hospitals should have "no violence" policies. This article examines the validity of those propositions.

Are Even the Most Ill Patients Always Capable of Controlling Their Actions?

In December 2012, 26-year old Sainah Theodore, an emergency room clerk, purchased diet pills.[2] After taking them, she experienced insomnia, auditory hallucinations, and bizarre behavior including arguing with strangers, sending irrational and aggressive text messages, stopping her car in the middle of a busy intersection, tearing through her home's screen door, and stabbing pillows and pictures. Ultimately, she was admitted to a psychiatric facility, where she spent five days until she recovered from the effects of unlisted ingredients in the pills, which lab tests reportedly confirmed to include phenolphthalein, sibutramine, and high levels of caffeine. Today, fully recovered, she has no memory of her bizarre and violent behavior.

In *Brain on Fire: My Month of Madness,* Susannah Cahalan recounts her experience in 2010 at age 24 with an acute manifestation of an initially unrecognized brain disease.[3] She was a new writer for the *New York Post* when she went to work one day and told a colleague that she didn't feel like herself. She felt numbness and tingling on the left side of her body, would cry hysterically one minute, and then was giddy the next. She became convinced she was bipolar and a consulting psychiatrist agreed. Over the course of weeks she experienced seizures, paranoid delusions, violent behavior, and catatonia. Another consultant told her she was probably experiencing alcohol withdrawal, although she rarely drank. She screamed all the way to the hospital, and once admitted, she tore at IVs and electrodes and ran uncontrollably up and down corridors. After two weeks, anti-anxiety drugs quieted her mind, but there was still no definitive diagnosis. Finally, Dr. Souhel Najjar, a neurologist, neuropathologist, and epileptologist, diagnosed her with anti-N-methyl-D-aspartic acid receptor encephalitis. Only in 2007 had University of Pennsylvania neuro-oncologist Josep Dalmau discovered and named the rare receptor antibodies responsible for attacking the brain in this syndrome, thought to be caused by a combination of genetics and some environmental trigger. Symptoms include psychosis and sometimes catatonia and seizures. At the time Cahalan was diagnosed, an estimated 90% of such cases were misdiagnosed. After undergoing treatment for about a year, Cahalan fully recovered.

In 1983, Dick Sem's wife brought him to an emergency department because he wasn't making sense and was acting out.[4] Acting completely out of character, he struck the emergency room physician. He spent four days in a coma, and ultimately was diagnosed with Reye's Syndrome. This had caused him to act violently—something over which he had no control and has no memory. Sem, who today is an independent security consultant, shares his story with healthcare organization clients to help them implement workplace violence policies.

Healthcare providers must sometimes interact with patients displaying violent behavior. While the scenarios just described may not be common (a 2014 survey found that nearly 50% of attacks on ED nurses came from patients and family members who were drunk or on drugs),[5] it is precisely their infrequency that increases the risk of mishandling. Says Dr. James McGee, a forensic psychologist, former FBI hostage negotiator, and director of forensic psychological services for Gavin de Becker & Associates[6]:

> There are many psychiatric patients who, by virtue of the nature and severity of their condition, are not responsible for their actions. Examples include people who are experiencing "command auditory hallucinations" with voices of some "ultimate" authority (God, the President, etc.) ordering them to commit violent acts. Paranoid delusions are a common feature of many psychotic disorders such as schizophrenia, mania, psychotic depression, drug-induced psychosis, postpartum psychosis, dementia, delirium, Alzheimer's, psychosis secondary to brain trauma or brain infections like encephalitis. Delusional paranoid patients often are convinced that they are in grave danger, being conspired against or about to be attacked or even murdered. In response, they may attack first as a purely defensive measure consistent with their delusional beliefs that they are in mortal peril. There is ample evidence that there are many medical/psychiatric conditions that render people incapable of making rational judgments and controlling their behavior including aggression and violence.[7]

In the face of such evidence that patients are sometimes incapable of controlling their violent behavior, why do messages to the contrary persist? One reason may be that if we can assign all responsibility to the patient, then we have no duty to act. In contrast, if we accept the fact that the sickest of brain-disordered or diseased patients are sometimes not in control of their actions, we then have some responsibility to plan for such occurrences and prevent harm where possible. But healthcare organizations aren't alone in that duty. Others, such as law enforcement—often the first to respond to a person in mental health crisis—and lawmakers, share that responsibility.

Fewer than a dozen states have laws requiring healthcare facilities to have workplace violence prevention programs.[8] Five states still have not enacted legislation for involuntary outpatient commitment[9]; such legislation attempts to stop the revolving door pattern of emergency department visits, jail, and homelessness that is common among the seriously mentally ill. In the states that have enacted such laws, loopholes often frustrate the legislation's purpose. "Kendra's Law" in New York was enacted after Andrew Goldstein, who has schizophrenia, shoved Kendra Webdale to her death in front of a subway train in 1999. Goldstein admitted knowing it was wrong but said he was unable to overcome the urge to push. Webdale's mother, Patricia, worked to ensure lawmakers passed the landmark mental health law giving judges more power to compel mentally ill people to comply with court-ordered psychiatric treatment. Goldstein was sentenced to 23 years in jail where, with medical treatment, his thoughts cleared. In 2012, after yet another person was pushed in front of a subway train, it was Goldstein calling for an even stricter Kendra's law: "When I heard on the radio that someone else was pushed, I couldn't believe it happened again. Should you let a mental patient like myself be in freedom so an incident like train-pushing can occur? . . . The court [should have] the right to hospitalize and medicate. There should be stricter regulations. They need to restructure Kendra's Law."[10]

Security consultant Sem notes that law enforcement and security are changing how they handle disruptive behavior calls by training

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2016 Photo ID Update: Cases in Wisconsin, Texas, and North Carolina Provide Interim Remedies and Potential Long-Term Implications

Attorney Richard Saks, Hawks Quindel

On the cusp of the 2016 presidential elections, restrictive election rules—including photo ID laws enacted by Republican-dominated legislatures across the country—have been softened and mitigated in various federal court battles waged by voting rights activists. Most notably, the Fourth Circuit U.S. Court of Appeals enjoined for the upcoming election North Carolina's photo ID law, as well as restrictions on early voting and voter registration, finding that the North Carolina Legislature intentionally discriminated against and targeted African-American voters "with surgical precision." *NAACP v. McCrory,* Nos. 16-1468, 16-1469, 16-1474, 16-1529, 2016 WL 4053033 at *1 (4th Cir., July 29, 2016). On August 31, the U.S. Supreme Court denied the state's request for an emergency stay.

The full Fifth Circuit found that Texas' photo ID law violates section 2 of the Voting Rights Act because it disproportionately diminishes the ability of minority voters to participate in the political process. *Veasey v. Abbott,* No. 14-41127, 2016 WL 3923868 (5th Cir., July 20, 2016) (*en banc*). Key facts cited by the court included findings that minority voters were approximately twice as likely as white voters to lack acceptable photo ID, and that 21.6% of voters with annual incomes below $20,000 lacked IDs compared to just 2.6% of voters earning between $100,000 and $150,000. In addition, the court pointed out that many minority voters are required to travel over 60 miles round-trip to state offices to request acceptable IDs for voting. *Id.* at *22-26. Upon remand to the district court for a remedy, the parties stipulated and the court approved a procedure under which any voter without a photo ID can sign a "Reasonable Impediment Declaration" and present a broad range of documents, including ones without a photograph, to verify identity—e.g., utility bills, bank statements, paychecks, or any government document containing name and address. *Veasey v. Abbott,* No. 13-CV-00193, Order (S.D. Tex., Aug. 10, 2016).

Here in Wisconsin, a full Seventh Circuit opinion denied appeals and cross-appeals for *en banc* hearings in two key consolidated cases, and with two months remaining, established the ground rules for the all-important November 8 election. *Frank v. Walker,* Nos. 16-3003, 16-3052, 16-3083, 16-3091, 2016 WL 4524468 (7th Cir., Aug. 29, 2016) (*per curiam*). This latest compromise Seventh Circuit decision kept in place two decisions, by identical three-judge panels, addressing state-requested stays of injunctive remedies imposed in two separate district court decisions—one by Judge Lynn Adelman in *Frank v. Walker,* No. 11-C-1128, 2016 WL 4059226 (E.D. Wis., July 19, 2016), the other by Judge James D. Peterson in *One Wisconsin Institute, Inc. v. Thomsen,* No. 15-CV-324-JDP, 2016 WL 4059222 (W.D. Wis., July 29, 2016).

The bottom line is that the photo ID law will be enforced on election day except for voters who petitioned for but failed to receive their IDs through the Department of Motor Vehicles' ID Petition Process (IDPP). Those voters may use their IDPP receipt to vote. The State of Wisconsin created the IDPP pursuant to the Wisconsin Supreme Court's mandate to eradicate the financial costs for indigent voters attempting to procure their birth certificates as required for voting-compliant photo IDs from the DMV. *Milwaukee Branch of NAACP v. Walker,* 2014 WI 98.

In both *Frank* and *One Wisconsin Institute,* the district courts did not invalidate the photo ID requirement, but prescribed distinct remedies to limit the disenfranchising effect of that law on voters unable to procure an ID by election day. In *Frank,* Judge Adelman initially invalidated the photo ID law in a facial challenge under both section 2 of the Voting Rights Act and the Fourteenth Amendment, finding that it had a significant discriminatory impact on the rights of minority voters to exercise the franchise. 17 F. Supp. 3d 837 (E.D. Wis. 2014). A Seventh Circuit panel reversed in a decision authored by Judge Easterbrook, but then split 5-5 on a petition for *en banc* review. 768 F.3d 744 ("*Frank I*"), *petition for en banc review denied,* 769 F.3d 494 (7th Cir. 2014). Plaintiffs then sought relief for those voters who could not obtain an ID with reasonable effort, and Judge Adelman issued a broad remedial injunction, subsequently stayed by a Seventh Circuit panel on August 10 of this year, providing that any voter unable to secure a photo ID by election day could vote by executing an affidavit stating: "I have been unable to obtain acceptable photo identification with reasonable effort." 2016 WL 3948068 at 24-25 (*Frank* II).

In *One Wisconsin Institute,* Judge Peterson declined to facially invalidate the photo ID law, holding that he was bound by *Crawford v. Marion County Election Board,* 553 U.S. 181 (2008), and *Frank I,* but found the IDPP to be "a disaster" because its delays and bureaucratic snarls disenfranchised "about 100 qualified electors—the vast majority of whom are African American or Latino—who should have been given IDs to vote in the April 2016 primary." 2016 WL 4059222 at *2. Judge Peterson declined to adopt the affidavit remedy ordered by Judge Adelman, but ordered that the IDPP be reformed after the election to avoid delays in obtaining a photo ID. For the November 8 election, Judge Peterson ordered that "any voter who enters the IDPP will promptly get a valid receipt for voting." *Id.* at *56.

The same three-judge panel that stayed Judge Adelman's affidavit remedy denied the state's request for a stay of Judge Peterson's remedial order. *One Wisconsin Institute v. Thomsen,* Nos. 16-3083, 16-3091 (7th Cir. Aug. 22, 2016). The full Seventh Circuit's August 29 *per curiam* opinion kept in place the stay regarding Judge Adelman's affidavit remedy, but allowed Judge Peterson's remedial order to remain in effect for the November 8 election. After the election, the Seventh Circuit will review both cases on their merits.

In addition to ordering reform of the IDPP, Judge Peterson's decision in *One Wisconsin Now* invalidated a number of other discriminatory and overly burdensome election laws recently passed by the Wisconsin Legislature, including: (a) the statutory time (10 days) and location (one per municipality regardless of size) restrictions on early in-person absentee voting; (b) the discriminatory requirement that college dorm lists, used by students to prove residence, confirm U.S. citizenship; (c) the increase in the durational residency requirement from 10 to 28 days; (d) the prohibition on municipal clerks e-mailing or faxing absentee ballots to voters; and (e) the requirement that student IDs for voting must be unexpired. *One Wisconsin Institute,* 2016 WL 4059222 at **55-57.

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Milwaukee Justice Center Update

MJC Welcomes "Old Pro" Kyla Motz as Legal Director

If you have volunteered at the Milwaukee Justice Center at any time over the past four years, chances are you have met Kyla Motz. Kyla started as a volunteer at the MJC in the summer of 2012 following her first year at Marquette University Law School and, with a few gaps, she has been with the MJC in some capacity ever since. Kyla served as an interim legal director in the fall of 2014 during leadership transition at the MJC. She began as the MJC legal director, overseeing the family forms assistance services, on August 1, 2016 following the departure of former legal director, Angela Cunningham, for the Milwaukee County District Attorney's office.

"I don't remember exactly why I began volunteering at the MJC. I know I was looking for an opportunity to get legal experience and had an interest in family law, so the MJC fit with my professional interests," Kyla said. "I do remember, though, why I stayed. I love getting the opportunity to empower people to help themselves. Clients come to the MJC with problems, sometimes very complicated problems, and we work with them to find solutions. I love the feeling when clients leave better off than when they came in."

Kyla graduated with a J.D. from Marquette in 2014, and volunteered during most of her law school career. She also interned with the Honorable Pamela Pepper, who was chief judge of the Eastern District bankruptcy court at the time. That experience led her to an associate attorney position with Freund Law Office's bankruptcy practice in Eau Claire. "I became interested in bankruptcy work when I interned with Judge Pepper," Kyla said. "I learned that bankruptcy, like the MJC clinics, is a discipline where your clients usually leave better off than they were."

Kyla has also handled many small claims cases in which the opposing party was a *pro se* litigant, which provided insight into how cases turn out when one or both parties are unrepresented. "Seeing judges, commissioners, and attorneys interact with *pro se* litigants helped me better understand the challenges our clients face in the court system and how we can go about tackling them," Kyla said.

Outside the MJC, you may catch Kyla on the bowling lanes. "I've bowled a 300 before—although, maybe you already know that since I'm fairly certain I used that in a Volunteer Spotlight back in the day," Kyla said. (She did, in the Autumn 2014 edition of the MJC Quarterly.) "I also see, or try to see, all of the Oscar-nominated moves in the theaters every year."

Welcome to the MJC team, Kyla! We're glad you are (still) here!

Parenting Conferences at the MJC: One-Year Review

In July 2016, the MJC began offering parenting conferences as a dispute resolution program developed in partnership with Milwaukee County Child Support Services, Quarles & Brady, and the Marquette University Law School Dispute Resolution Certificate Program. In the parlance of alternative dispute resolution, parenting conferences are moderated settlement conferences, allowing parents to negotiate terms of an agreement with each other and the child support agency, with the help of an attorney facilitator. When an agreement is reached, an MJC family forms assistance student volunteer assists the parties in completing a Stipulation and Order to Change for filing with the Family Court Commissioner's Office.

In the past year, the Parenting Conference Program has scheduled 132 conferences, 44 (33%) of which resulted in fully signed and submitted agreements. Another 39 conferences (29%) led to at least one parent completing a form (a modification motion, proposed parenting plan, or stipulation to be sent to the other party). In only 21 instances (15%) did neither party attend or attempt to reschedule.

The Parenting Conference Program received a *Pro Bono* Grant from the State Bar of Wisconsin's Legal Assistance Committee to assist in expanding the program to a weekly basis. The expansion began in early 2016 with four to six parenting conferences per week at the MJC.

FAA Issues Final Rule for Small Drones

Attorneys Steven L. Ritt and Eric G. Barber, Michael Best

The Federal Aviation Administration (FAA) recently released its final rule for small drones, which became effective in late August of 2016. Highlights of the new rule include:

- It allows commercial flight of drones weighing less than 55 pounds, at a maximum speed of 100 mph, within 400 feet above ground level during the daytime as long as they remain within the line of sight of the operator;
- It does not require the drone operator to have a conventional pilot's license;
- The person flying the drone must be at least 16 years old and either have a remote pilot airman certificate with a small unmanned aircraft systems rating, or be directly supervised by someone with such a certificate;
- Temporary certificates (pending successful test completion) are available upon application and successful completion of TSA security vetting;
- Flights over people are prohibited unless they are directly participating in the operation or activity for which the drone is being flown;
- Night flights and flights under a covered structure are prohibited;
- Operation of the drone must not pose undue risk to persons or property;
- Certain restrictions in the rule are subject to possible waiver upon application to the FAA; and
- While FAA airworthiness certification of the drone is not required, the remote pilot in command must conduct a preflight check of the drone to ensure that it is in a condition for safe operation.

Insurance can and should be a part of the business plan for any drone operator and those using drones. The new regulations promptly resulted in changes to insurers' approaches to underwriting drone-related risks:

- The floodgates are open. Insurers report a dramatic increase in the number of applications for drone-related insurance. Capacity is limited, so the market may tighten as "safe" risk is underwritten quickly.
- Rather than relying on the FAA's section 333 exemptions as a general guidepost for evaluating potential risk, as they had in the past, insurers now engage in a qualitative case-by-case evaluation of insurance applicants. While the process of securing insurance can still be quick, it is slowing.
- An applicant for drone-related insurance can increase the likelihood of getting lower premium rates and higher limits of insurance by understanding how to package and present the application and accompanying materials.
- Applicants must exercise caution in making representations during the underwriting process that may come back to haunt them, such as representing that the applicant will follow all applicable laws and regulations at all times.
- Parties seeking to require vendors, contractors, or counter-parties to carry drone-related insurance should understand what is commercially reasonable based on market conditions.

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***Photo ID* continued from p. 19**

Judge Peterson invalidated these provisions under what is known as the Anderson-Burdick balancing framework to analyze First and Fourteenth Amendment challenges to restrictive, burdensome voting rules, finding that the state offered little justification warranting the restrictions. The order lifting the 10-day and one-location restrictions on in-person absentee voting is probably the most important for the upcoming election; cities such as Milwaukee and Madison immediately announced plans to expand in-person absentee voting to multiple polling locations and to expand the dates during which such voting may occur.

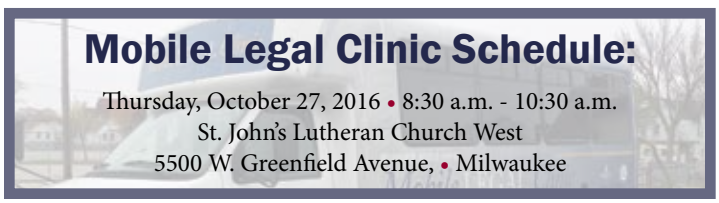
After the election, the Wisconsin, North Carolina, and Texas cases will receive further judicial review that may impact the legality of photo ID requirements. The North Carolina case, *NAACP v. McCrory,* involved a finding that the legislature acted with discriminatory intent, and upheld findings of First and Fourteenth Amendment violations—legal theories that have not been proven in other pending cases. The state will probably petition for certiorari to the U.S. Supreme Court. In Texas, *Veasey v. Abbott* has been remanded to the district court to determine whether Texas, like North Carolina, acted with racially discriminatory intent in enacting its photo ID law. Even absent such a finding, the state will probably file a certiorari petition to the U.S. Supreme Court, which would provide the first opportunity for the Court to review, through the prism of section 2 of the Voting Rights Act, the continuing vitality of *Crawford v. Marion County Elections Board* and validity of photo ID laws. And in Wisconsin, the prospects remain for the Seventh Circuit to revisit portions of its holding in *Frank I,* given the fact that it divided 5-5 *en banc* and one of the five voting against review has since retired. This creates an intriguing possibility that a majority might approve the affidavit remedy ordered by Judge Adelman.

In all these cases, voting rights advocates struggle with the tension between arguing to facially invalidate photo ID laws and ameliorating the harsh effects when voters cannot obtain voting-complaint IDs. The affidavit remedy adopted by Judge Adelman in *Frank II* is a remedy with real teeth for otherwise disenfranchised voters, but as a general matter, it is unclear how effective other "softening" remedies typically prove to be and whether they are actually used by voters. *See* Richard L. Hasen, *Softening Voter ID Laws Through Litigation: Is It Enough?,* WISC. L. REV. Forward (forthcoming 2016), abstract available at http://electionlawblog.org/?p=80636.

In any event, these pending cases provide a stronger foundation for all voters to participate in the political process leading up to the 2016 presidential election. Voting rights advocates anticipate the opportunity after the election to build upon the advances in these cases, and to secure appellate decisions on the merits that establish clearer parameters for invalidating discriminatory voting requirements such as photo ID.

The author represented the plaintiffs in one of the state cases challenging Wisconsin's photo ID law, Milwaukee Branch of NAACP, et al. v. Walker, *2014 WI 98.*

Editor's Note: On October 13, Judge Peterson in One Wisconsin Institute *found that the state had not complied with his previous order concerning the IDPP, because the public had not been adequately informed about the IDPP and DMV staff had not been adequately trained to administer it. He ordered remedies to target these problems, but declined to suspend the voter ID law. (Case No. 15-CV-324-JDP, Doc. # 293.)*



***Juvenile Corrections* continued from p. 10**

2. Enhancing community-based resources

Finding what works is a must. Research has shown that providing the right intervention to the right young people at the right time is crucial to successful intervention.[6] Historically, our system has not done this well. A one-size-fits-all approach to addressing delinquent behavior does not work. For instance, we know that when some low-risk juvenile offenders have any contact with the system or are offered the wrong kind of services, the experience can increase their risk to reoffend.[7] Accordingly, the needs of low-risk, low-need young people should be addressed informally by their community whenever possible. The safety of our community is the shared responsibility of families, neighborhoods, schools, community centers, and places of worship. We cannot rely solely on law enforcement, the courts, and formal service providers to offer the front-end interventions.

3. Smaller, local, secure facilities for high-risk juveniles

A small number of young people are at high risk of committing violent crimes and need to be placed in a secure facility for their own safety and the safety of the community. These young people need a secure setting where they receive the kind of intensive treatment and rehabilitation that reduces the likelihood they will commit further crimes. Such secure care facilities should not be located hundreds of miles away.

A few states have chosen to close their larger juvenile institutions and replace them with smaller secure care facilities that have shown promising results. With this in mind, local officials have been exploring secure, evidence-based programs around the country that do work to keep communities safe and address the needs of young people. The key components of these programs are that they are small, community-based facilities; they feature a high staff-to-juvenile ratio; and they involve families and community in the young person's rehabilitation. Staff at these facilities must be diverse, culturally informed, and well-versed in adolescent brain development and trauma-informed care.

If we continue business as usual, there will be too many more "Dereks" in our community and our streets will not be any safer.

(Special thanks to Sara Scullen, staff attorney at children's court, and Katie Holtz, Children's Court Coordinator (Delinquency), for their help with this article)

[1]"Derek" is a fictional juvenile, but the facts of his story are typical of a Milwaukee County young person at Lincoln Hills School.

[2]Mendel, Richard, "Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn't" (Washington, D.C.: American Youth Policy Forum, 2003).

[3]James Austin, Kelly Dedel Johnson, and Ronald Weitzer, "Alternatives to the Secure Detention and Confinement of Juvenile Offenders" (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2005).

[4]Division of Juvenile Corrections Annual Report, http://doc.wi.gov/Documents/WEB/FAMILIESVISITORS/JUVENILESERVICES/ANNUALREPORTS/DJC_%202014_Annual_Report.pdf (viewed September 15, 2016).

[5]Wis. Stat. § 938.34(4m)(b).

[6]Madeline M. Carter and Hon. Richard J. Sankovitz, "2014 Dosage Probation: Rethinking the Structure of Probation Sentences" (Center for Effective Public Policy).

[7]Lipsey, M.W., and Wilson, D.B., "Effective Intervention for Serious Juvenile Offenders: A Synthesis of Research," in R. Loeber and D.P. Farrington, eds., *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (Thousand Oaks, CA: Sage Publications, 1998).

MBA Receives Equal Justice Medal

The Legal Aid Society of Milwaukee presented the Milwaukee Bar Association with the Thomas G. Cannon Equal Justice Medal at Legal Aid's 100th Anniversary Celebration Luncheon on September 13. On hand at the Potawatomi Hotel & Casino Event Center to accept the award for the MBA were President Andy Wronski and President-Elect Shannon Allen. *(See cover.)*

Legal Aid Society Board Chairman Peter Stone and MBA President Andy Wronski ▼

Legal Aid Executive Director Kimberly Walker with Equal Justice Medal winners Margadette Demet, Andy Wronski (representing the MBA), and Mary Lou Young (representing the United Way of Greater Milwaukee and Waukesha County) ▼

Zero Tolerance continued from p. 18

personnel to recognize signs of mental illness and respond with an understanding that the usual methods of deterring unwanted behavior may aggravate rather than deter those with serious mental illness. In 2009, the Houston Police Department was the first in the nation to devote an entire division to mental health. Reform efforts began in 2007 after two people with schizophrenia were shot and killed by police two months apart.[11] In Houston, all new officers undergo 40 hours of crisis intervention training, and Houston's mental health division is now considered the gold standard for the nation.

Origins of the Healthcare "Zero Tolerance" for Violence Policy

The Houston Police Department's mental health division would probably describe its reform efforts as the opposite of a "zero tolerance" policy. Yet, hospitals continually hear that they need a "no tolerance" or "zero tolerance" for violence policy. The source of that terminology in healthcare appears to be the Occupational Safety and Health Administration (OSHA). As recently as 2015, OSHA updated its Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers, and reiterated its adherence to a "clear policy of zero tolerance for WPV (workplace violence)."[12]

The reason OSHA cites for adhering to the "no violence" terminology is that it "hear[s] from employees who fear they might lose their jobs or be blamed if they complain," and "when nothing happens in response to an incident or a complaint, they stop complaining. That's why we say that management must communicate and enforce a policy of zero tolerance for violence . . . . We're trying to change [the] culture and offer guidance."[13]

OSHA recommends "[c]learly stating to patients, clients, visitors, and workers that violence is not permitted and will not be tolerated."[14] Certainly, communicating such a message can be a very important step toward curbing disruptive behavior. (Of course, this assumes recipients of the message are able to comprehend it and also control their behavior.) What OSHA means by "zero tolerance" is less clear. OSHA states that its new WPV guidelines "focus on particulars of the setting and how they relate to causes and controls," and cites epidemiological studies demonstrating that "pain, devastating prognoses, unfamiliar surroundings, mind- and mood-altering medications, drugs, and disease progression can all cause agitation and violent behaviors." OSHA also states that "zero tolerance should extend even to verbal and nonverbal threats," without explaining what "zero tolerance" is in the context of patients in pain, those with a devastating prognosis, those in unfamiliar surroundings, or those whose medication or disease progression has caused them to behave violently.[15]

For research and data reporting purposes, OSHA has adopted the California Division of Occupational Safety and Health's description of four workplace violence categories, which are based on the relationship of the perpetrator to the place of employment.[16] In type 1 violence, there is no relationship between the perpetrator and the workplace (e.g., a healthcare provider injured during a burglary); type 3 involves employee-on-employee violence, and type 4 is domestic violence brought into the workplace. Violence by patients or their family members directed toward healthcare staff is type 2 violence. Unfortunately, type 2 violence is not further divided between intentional ("targeted") violence and spontaneous ("affective" or "reactive") violence. Thus, the aggrieved patient who makes a decision to take a violent action against a provider with whom he is angry is grouped with the geriatric Alzheimer's patient who grabs at her caregiver's hair while being helped with bathing or dressing. Similarly, in recommending a zero tolerance policy, OSHA does not distinguish between these two very different types of violence.

Indeed, healthcare facilities trying to enforce a "zero tolerance" policy soon find that it is like the "don't talk to strangers" rule: as soon as the mandate is out of our mouths, our children observe us talking to store clerks, the person standing next to us in line, and the bank teller—all of whom are strangers.[17] Similarly, as soon as we publish the "zero tolerance" for violence policy, we're likely to make exceptions to it. That is true because both situations (child safety and workplace violence) are more complex than can be summarized in a soundbite. The name belies the complexity of the problem and could lead an employee to believe that no matter the circumstances, "zero tolerance" requires police to be called (or dismissal or a restraining order or similar action demonstrating "zero tolerance"). Additionally, leadership may be lulled into the belief that with a "zero tolerance" for violence policy in place, the organization has no need for staff de-escalation training, a risk assessment survey, or any of the other multiple layers of prevention and response plans that comprise a comprehensive WPV program in the healthcare setting today. It may make sense to have a subsection within a broader WPV policy that designates certain incidents as "zero tolerance," for which a particular response is prescribed, but a healthcare organization's overall WPV policy and efforts are probably not served well by such nomenclature.

Sem recalls the early stages of overly broad "no tolerance" policies introduced in workplaces regarding sexual harassment and in schools regarding violence. He remembers when, as a security director for a company, he was absorbed for some time investigating a complaint about an employee's arm tattoo depicting a swimsuit model; the employee, it turned out, had been a sailor during World War II. Similarly, the early days of school "no tolerance" policies resulted in student expulsions for such things as bringing art scissors to school. Sem encourages his clients who use "zero tolerance" language to clearly define it in a way that makes sense—for example, that the organization will thoroughly investigate and fairly resolve each incident, taking into consideration whether the violence is the result of an uncontrollable act or instead is purposeful.

Efforts Vary

After Hurricane Katrina in 2005, Ochsner Medical Center began experiencing an increase in agitated and combative patients and family members, and recognized the need for healthcare providers and staff to receive de-escalation training and be able to call a "code green" for additional staff support.[18] With the implementation of that training and program, incidents defuse more quickly and staff members feel more secure in their work environment, helping employee retention and recruitment.[19]

Clearly, more needs to be done at some facilities. Dr. Stephen Seager has been an outspoken critic of his administration at Napa State Hospital, a psychiatric hospital run by California's Department of State Hospitals, where more than 80% of the patients (some having committed unspeakable crimes) are referred by the criminal justice system.[20] In 2014, Napa State Hospital patients committed more than 1,800 physical assaults. On October 23, 2010, psychiatric technician Donna Gross was killed by a patient outside the buildings, where staff alarms did not function. (Now they function both inside buildings and outside on the grounds, thanks in large part to the efforts of Michael Jarschke, psychiatric technician at Napa State Hospital for over 30 years.) How did Napa State Hospital become such a dangerous place? The hospital opened in 1875 and until about 20 years ago, most of its patients were there due to civil commitments that did not involve crimes.[21] The fairly recent shift to the current population coming from the criminal justice system required greatly enhanced safety measures that weren't implemented.[22]

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***Zero Tolerance* continued from p. 23**

OSHA's updated healthcare WPV policy is not a "one-size fits all" model. Instead, it encompasses prevention strategies based on epidemiological studies that include physical site assessment to identify high-risk areas (e.g., high volume areas, unrestricted access points, poor lighting, isolated areas), identification of hazards and other risk factors (e.g., inadequate healthcare staffing, inadequate security staffing, inadequate staff training, long wait times, increased use of emergency departments for psychiatric treatment, increased presence of gangs, increased presence of armed private citizens), and implementation of well thought-out policies that consider the broad range of patients and others entering the doors. It is probably time for OSHA to let go of the "zero tolerance" description.

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[6]Gavin de Becker & Associates is a firm that protects people who are at risk, advises on the assessment and management of situations that might escalate to violence, and develops strategies for improving safety and privacy.
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[22]*Id.*

***Property Tax* continued from p. 9**

(adjusted to the subject property).

- A property owner will be barred from having a hearing or contesting an assessment if the owner refused the assessor the right to inspect the property after reasonable request was made by certified mail.
- If a property owner presents a written appraisal as evidence of value, the property owner should have the appraiser present sworn testimony in support of the appraisal. A property owner should present an appraisal for value—not an appraisal for financing or an estimate of value.
- It is essential that all forms are completely and accurately filled out.
- The BOR has the authority, usually invoked for complex appeals, to waive a BOR hearing and allow a property owner an appeal directly to the circuit court. The property owner may seek this bypass by timely filing a Request for Waiver form.

Property assessments are meant to be fair to all property owners. Objectors can enhance their chances of success by understanding and adhering to the rules, and by arming themselves with convincing evidence.

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[1]City of Milwaukee residents must go through an intermediate step: filing an objection with the Board of Assessors. This body serves as a first level of appeal and screens cases for the BOR. A board of assessors normally does not hold a formal hearing.
[2]For an excellent and comprehensive discussion of the appeals process, *see* McAdams, "Over Assessed? Appealing Home Tax Assessments," *Wisconsin Lawyer* (July 2011).

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